

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

WORLD WRESTLING
ENTERTAINMENT, INC. and WWE
PROPERTIES INTERNATIONAL, INC.
(as successor in interest to WWE
LIBRARIES, INC.)

Case No. 07-cv-2058-ADM-KMM

Plaintiffs,

v.

ORDER

AWA WRESTLING
ENTERTAINMENT, INC., and DALE
R. GAGNER, an individual, a/k/a
DALE R. GAGNE, a/k/a DALE
GAGNE,

Defendants.

This matter is before the Court on the Plaintiffs' Motion for a Rule to Show Cause regarding Defendant Dale R. Gagner's alleged violation of the permanent injunction entered by United States District Judge Ann D. Montgomery in this matter. Pls.' Mot., ECF No. 78. Plaintiffs' motion and their proposed order ask the Court to find that Mr. Gagner is in civil contempt. They also ask the Court to require him to pay Plaintiffs' attorneys' fees incurred in bringing the motion and to impose a fine for every day he is not in compliance with the permanent injunction. *See, e.g.*, ECF No. 83. Plaintiffs alternatively ask the Court to issue an order requiring Mr. Gagner to show cause why he should not be held in civil contempt and subject to the sanctions ultimately requested. Pls.' Mot. at 1 (providing that Plaintiffs "respectfully move for a rule to show cause why [Mr. Gagner] should not be held in civil contempt due to his continuing violation of this Court's [permanent injunction]").

The Court held a hearing on the Plaintiffs' motion on November 15, 2018. Mins., ECF No. 89. Plaintiffs' counsel appeared at the hearing, but Mr. Gagner did not. *Id.* However, both the Plaintiffs' written submissions and their representations at the hearing indicate that Mr. Gagner was served with the motion and notice of the hearing through multiple mechanisms, including direct personal service.

Although the Plaintiffs' motion and supporting documents make a strong showing that Mr. Gagner has engaged in conduct that violates the permanent injunction, the Court defers entering any Order finding Mr. Gagner in civil contempt and imposing any sanctions at this time. For two reasons, the Court will hold an additional hearing on this matter. First, Mr. Gagner is *pro se* and has not yet responded to the Plaintiffs' motion. The Court strongly encourages him to participate in these proceedings and wants to give him an additional opportunity to do so. Second, the record provides little guidance at this time on how the Court would determine the appropriate amount of a fine, if the Court determines that such relief is appropriate. The Court has no information before it relating to the profits Mr. Gagner may have obtained through conduct that violates the injunction. Nor does the record currently reveal any basis on which the Court could determine Mr. Gagner's ability to pay a monetary fine.

For these reasons, the Court grants the Plaintiffs' motion to the extent it seeks an order requiring Mr. Gagner to show cause why he should not be held in civil contempt for violating the permanent injunction. Accordingly, **IT IS HEREBY ORDERED THAT:**

1. The undersigned will hold a second hearing on the Plaintiffs' motion seeking civil contempt sanctions against Dale R. Gagner **on December 17, 2018, at 3:30 p.m.**, in Courtroom 8E in the United States Courthouse, 300 S. 4th St., Minneapolis, MN 55415.

2. Mr. Gagner is hereby ordered to appear at the December 17, 2018 hearing and to show cause why he should not be held in civil contempt for

continuing violation of the December 18, 2008 Final Judgment permanently enjoining him from, among other things, using Plaintiffs' AWA and AMERICAN WRESTLING ASSOCIATION marks or any colorable imitations thereof.

3. Mr. Gagner is advised that at any time prior to the December 17, 2018 hearing set by this Order, he may file a written response to the Plaintiffs' motion. Among other matters, his response should address: (a) whether he has brought his conduct into compliance with the December 18, 2018 permanent injunction; and (b) whether his financial position should be taken into account in determining the proper amount of any civil contempt fine.

4. The Clerk's Office is directed to mail a copy of this Order to Mr. Gagner at the following address:

Dale R. Gagner
7850 142nd Street
Apple Valley, Minnesota 55124

5. **On or before December 10, 2018**, Plaintiffs shall file a short letter brief addressing the legal significance of an individual's ability to pay when the Court is considering the amount of any fine meant to coerce that person's compliance with an injunction. Plaintiffs shall also submit to the Court its reasonable costs and fees incurred in bringing the "Motion for a Rule to Show Cause," including any affidavits, declarations, and exhibits necessary to support the reasonableness of any requested costs and fees.

Date: November 15, 2018

s/ Katherine Menendez

Katherine Menendez

United States Magistrate Judge